

Chief, FE IV

23 February 1951

Office of General Counsel

Separation Allowances

1. The memorandum of 2 January 1951, from the Acting Chief, FE IV, to [] was forwarded to this office for decision in accordance with the comments of [] on the routing sheet, dated 10 January 1951.

2. The basic memorandum asks if a policy can be adopted which grants employees the option of taking their dependents to the [] in the alternative, permits them to receive a separation allowance if such dependents are left at home. By "employees," of course, we mean employees of the Government, []

3. It is our understanding that the area of operations in which [] is engaged was originally under the control of the Joint Chiefs of Staff and dependents were not permitted to enter the area. Although this ruling has since been rescinded and dependents may now enter the area, there is no compunction on the Agency to relax its own restriction if it is determined that the presence of dependents is not desirable. In the absence of guidance from the Comptroller General, interpretation of the provisions of the Standardized Government Civilian Allowance Regulations in regard to separation allowances depends largely upon the practices employed by the Foreign Service. It seems to be clearly determined that the allowance should not be granted purely for the personal convenience of any one individual, although the lone fact that separation allowances are not authorized for all persons at a post will not necessarily preclude the grant of such an allowance to a particular individual when the conditions are such that his dependents cannot live within the area. Situations of this nature can occur when there are notably unhealthful living conditions derived solely from the absence of competent medical attention for a given individual when the dependents are persons non grata to the foreign government, and when housing facilities, subject to control by "U. S. Military authorities, a foreign government, or some other authority," are not made available for the individual's family.

4. Section 7.2 of the Standardized Allowance Regulations provides:

"A separation allowance may be granted whenever the head of an agency determines that an officer or employee of the agency is compelled to maintain his family, or any of them, elsewhere in the country of his assignment because of the existence of any of the following conditions:

- a. Dangerous living conditions, meaning conditions warranting or having resulted in the evacuation or exclusion of families from an area on account of danger to life or property, including but not limited to war, riots, earthquakes, epidemics, etc.;
- *b. Notably unhealthful or excessively adverse living conditions at the post;
- c. For the convenience of the Government, meaning situations at posts
 - (1) where housing facilities are subject to control by U.S. military authorities, a foreign government, or some other authority, and are not made available for the use of the family of an officer or employee; or
 - *(2) where, in the interest of the Government, the family of an officer or employee does not proceed to or remain in his country of assignment as a result of an agency's
 - (1) recommendation, or
 - (11) withholding or terminating necessary authority."

5. It is our understanding that adequate housing facilities are available in the area for employees and their families, although such facilities are primitive and educational services are non-existent. If the housing facilities are not available for all the employees, there would not appear to be any objection to an Agency determination made on the basis of § 7.2 c.(1) that a separation allowance was authorized for those persons for whom housing was not provided. We are aware that the door was initially closed to dependents because of the bar placed by the Joint Chiefs of Staff. The rescission action does not prevent the Agency from withholding permission for dependents to enter the area, but once permission is granted to some, it should presumably be granted to all. If permission is granted, there is no longer justification for an automatic entitlement to a separation allowance, and an individual employee would be obliged to support his claim on the basis of conditions peculiarly applicable to him alone. In passing, we wish to call attention to the fact that inadequate or even non-existent educational facilities is not considered a valid basis for granting separation allowances. This is in line with Foreign Service practice.

6. If you make a determination that all dependents may enter the area, it is suggested that the basis of payment for separation allowances for the interim period following the removal of the military bar is predicated on a temporary continuation of the bar by Agency action required for the preservation of security.

7. In collateral relation to the problem at hand, we are aware that commitments may have been made to the overseas employees to return them to the United States at the end of one year's service for "re-orientation." While incidental leave could be granted during the period the employee is in the States, we wish to emphasize the fact that this is not to be considered "home" leave in the normal sense which would justify the return of dependents at Government expense. The provisions of CIA regulations and § 5.(a)(1)(D) of P.L. 110 must be observed despite the intervention [redacted]

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cc: Subject ✓
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Legal Decisions
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